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FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

Having heard the testimony, having examined the exhibits, and

1 having considered the contentions of the parties, the Board makes these

2 FINDINGS OF FACT

3 I

4 In 1960 appellant purchased a 46,274 square foot (SF) lot located  
5 on the shores of Quartermaster Harbor, in Burton on Vashon Island. In  
6 1972 appellant planned and built his home thereon which was completed  
7 in 1973 and is currently his personal residence. The irregularly-  
8 shaped lot was made from a combination of three adjacent waterfront  
9 lots of an old plat. Appellant was aware of the Shorelines Management  
10 Act at the time his house was constructed.

11 Appellant seeks to subdivide his lot into two lots, one 31,000 SF  
12 waterfront lot and one 15,000 SF upland lot. He intends to sell the  
13 waterfront lot and build a retirement house on the upland lot. In  
14 furtherance of his plan, appellant sought to replat his lot in 1977  
15 and was denied because the replat would not be in conformance with the  
16 conservancy environment. Appellant then sought to qualify his  
17 proposal under the applicable King County Shoreline Master Program  
18 provisions. As proposed, the upland lot is to be located partially  
19 within 200 feet of the ordinary high water mark. The waterfront lot  
20 is to be located wholly within the 200 foot wetland area. Judd Creek,  
21 which flows into Quartermaster Harbor, is located west and south of  
22 the instant site.

23 II

24 Appellant possesses a lot having an area of the median-sized lot  
25 of the 12 lots on the north; about half of the lots are larger and  
26 half are smaller (28,000 SF or less) than appellants. All of the 12  
27

1 lots are located in a conservancy environment designation by the King  
2 County Shoreline Master Program (KCSMP).

3 To the south, across Judd Creek, are situated 15 lots of an old  
4 plat. Because of the voluntary action of the owners prior to 1978,  
5 the 15 old lots now comprise only 7 buildable lots. These 7 lots on  
6 the south shore of Judd Creek are also located in a conservancy  
7 environment. In 1978, the KCSMP was amended to include a requirement  
8 that adjacent substandard lots in one ownership be combined to meet  
9 lot size requirements.

10 The KCSMP places both the north and south shores, which form the  
11 mouth of Judd Creek, in a conservancy environment. This designation  
12 does not extend further up the creek but is limited to the above  
13 described lots on the north and south shores. The shoreline  
14 environment designation for other nearby areas is rural.

### 15 III

16 The KCSMP, section 609(2) allows single-family residences in a  
17 conservancy environment subject to other requirements. Section 610  
18 provides that the minimum lot area in a conservancy environment is  
19 five acres which may be reduced to 40,000 SF under certain  
20 conditions. Appellant's lot meets those conditions and is subject to  
21 the 40,000 SF limitation rather than the 5 acre limitation.  
22 Appellant's lot is 46,274 SF and does not have sufficient area to  
23 subdivide into two lots located in a conservancy environment under the  
24 KCSMP. Consequently, a variance from the requirement of the KCSMP was  
25 requested by appellant and denied by respondent. Respondent has not  
26 granted a variance similar to that requested in the vicinity of  
27

1 appellant's site.

2 IV

3 The subject lot is located in an area zoned RS 15000. Although  
4 there is movement to increase the area required for each lot from  
5 15,000 SF to an acre, such rezone has not yet been adopted.

6 V

7 Any Conclusion of Law which should be deemed a Finding of Fact is  
8 hereby adopted as such.

9 From these Findings, the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 Appellant's proposed upland lot is located partially within a  
13 conservancy environment and must meet the provisions of such  
14 environment. Therefore, each lot must comply with the 40,000 SF  
15 minimum lot size requirement. Appellant's lot does not meet this  
16 requirement.

17 II

18 To grant a variance from the minimum lot size requirement of the  
19 KCSMP, appellant must meet the conditions enumerated in WAC  
20 173-14-150. KCSMP section 804. At issue are the purpose of a  
21 variance as set forth in the preamble and subsections 1, 2 and 4 of  
22 the regulation.

23  
24 1. WAC 173-14-150(2) provides:

25 Variance permits for development that will be located landward of  
26 the ordinary high water mark (OHWM), as defined in RCW  
27 90.58.030(2)(b), except within those areas designated by the

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

III

The criteria set forth in WAC 173-14-150(2)<sup>1</sup> are dispositive of this case. The standards set forth in the KCSMP do not preclude or significantly interfere with a reasonable use of the property. Appellant has a reasonable use of his property, as his personal residence, and seeks more of a use. He does not qualify under WAC 173-14-150(2)(a).

Appellant's proposed subdivision would be compatible with other existing activities in the area and will not cause adverse effects to adjacent properties. However, to allow the proposal would be detrimental to the conservancy environment designation because it would be nonconforming to the purposes and intent of such designation. WAC 173-14-150(2)(c).

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1. Cont.

department as marshes, bogs, or swamps pursuant to chapter 173-22 WAC, may be authorized provided the applicant can demonstrate all of the following:

(a) That the strict application of the bulk, dimensional or performance standards set forth in the applicable master program precludes or significantly interferes with a reasonable permitted use of the property.

(b) That the hardship described in WAC 173-14-150(2)(a) above is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the master program, and not, for example, from deed restrictions or the applicant's own actions.

(c) That the design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation.

(d) That the variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area, and will be the minimum necessary to afford relief.

(e) That the public interest will suffer no substantial detrimental effect.

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

1 The variance, if granted, would constitute a special privilege not  
2 enjoyed by half of the properties on the north shore. WAC  
3 173-14-150(2)(d). Moreover, if granted, the cumulative impact of  
4 additional like requests would render ineffective the conservancy  
5 environment designation. WAC 173-14-150(4).

6 We conclude that appellant has not met all the criteria of WAC  
7 173-14-150(2) as he must. Even if he met such criteria, the  
8 cumulative impact of like requests could produce substantial adverse  
9 effects to the immediate shoreline environment. There are no unique  
10 or extraordinary circumstances shown that would justify departure from  
11 the provisions of the KCSMP. We find respondent's analysis and  
12 reasons for denial fully supported by the evidence. We do not rely on  
13 the studies and recommendations set forth in paragraph 5 of the  
14 reasons for denial, however.

#### 15 IV

16 Appellant recognizes that the conservancy environment designation  
17 is his main problem. However, this Board does not redesignate  
18 environments in master programs. That function belongs to local  
19 government. King County has designated the area conservancy. The  
20 KCSMP provides a process to redesignate an environment, although there  
21 is no guarantee that an applicant will be successful. Section 813.

#### 22 V

23 The denial of a variance permit should be affirmed.  
24  
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26  
27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW & ORDER

VI

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

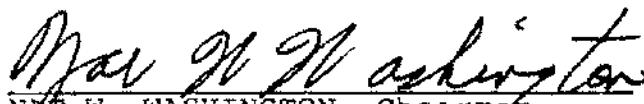
From these Conclusions, the Board enters this

ORDER

The denial of a variance permit to W. K. Oliver is affirmed.

DONE this 28<sup>th</sup> day of January, 1981.

SHORELINES HEARINGS BOARD

  
NWT W. WASHINGTON, Chairman

MARIANNE CRAFT NORTON, Member

  
ROBERT S. DERRICK, Member

  
ART O'NEAL, Member

  
DAVID AKANA, Member